Supreme Court, U.S.
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No. 05-27

IN THE

Supreme Court of the United States

RICHARD WEBSTER,

Petitioner,

v.

UNITED AUTO WORKERS, LOCAL 51, INTERNATIONAL AUTO WORKERS, ARTHUR BIANCHI, NATHANIEL MARTIN, GIL WOJCIK, ROSLYN GRANT, HOLLY WAINGROW, WILLIAM MICHAEL KIRKSEY, OLLIE WILLIAMS, ROBERT LEE MITCHELL, JAMES MOORE, STEPHEN YOKICH, MAURICE MITCHELL, STAN GEIS, PETE CUTWAY, NATE GOODEN, AND EUNICE STOKES,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

I. Did the Sixth Circuit correctly hold that Petitioner was not "otherwise disciplined" within the meaning of Section 609 of the Labor Management Reporting and Disclosure Act, 29 U.S.C. §529, when it is undisputed that Petitioner voluntarily retired from his employment and that neither Local 51 nor its officers nor its members took any action against him which affected his status as a local union member?

PARTIES TO THE BRIEF

This Brief in Opposition is filed by Respondents UAW Local 51 and its current and former officers Arthur Bianchi, Nathaniel Martin, Roslyn Grant, Holly Waingrow, Ollie Williams, Robert Lee Mitchell and James Moore. In this Brief, these individual Respondents are sometimes referred to as the Local Defendants.

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STATEMENT OF THE CASE

The "facts" as recited in the Petition bear scant resemblance to the record which was developed in the trial court. It is impracticable and unnecessary to identify and correct the many inaccuracies and unsupported "factual" assertions in the Petition.

Many of the recited "facts" are entirely irrelevant to the issue raised in the Petition. For example, Mr. Webster details

his disputes with a William Michael Kirksey. (Petition at 4-5). Although listed in the caption, Mr. Kirksey was never a defendant. (Apx.196-202).

Mr. Webster claims that Defendants Bianchi, Stokes and Yokich wrongfully removed him from the Local 51 by-laws committee in September 2002. (Petition at 10). Neither Mr. Bianchi nor Mr. Yokich were in office in September 2002. Mr. Bianchi, who was elected Local 51 President in May 1999, was defeated in his reelection bid in May 2002 and left office in July 2002. (Apx. 1252). Mr. Yokich retired as UAW President in June 2002 and died in August 2002. (Apx. 324-327).

Mr. Webster claims that he retired in 2003 because of the "continuing acts of the named Defendants," including threats by UAW President Yokich. (Petition at 10). Mr. Webster, who actually retired in December 1999, admittedly had no evidence that any of the Defendants were responsible for the so-called "continuing acts" that he alleges occurred after his retirement. (Apx. 425). And, of course, Mr. Yokich did not engage in any "continuing acts" after his death.

The actual record, as developed during discovery, discloses that Mr. Webster was hired by Chrysler Corporation in 1964. (Apx. 342-43). He held full time elected positions with Local 51 since approximately 1974. (Apx. 340-43).

In May 1998, Mr. Webster, Robert Lee Mitchell and James Moore were elected to a three-year term as Shop Committeemen. In that election, Arthur Bianchi was elected Chief Steward. (Apx. 339, 346-347). Mr. Webster's opponent, Darryl Mitchell, challenged the election. (Apx. 828-842). Mr. Webster, Mr. Mitchell, Mr. Moore and Mr. Bianchi together opposed a rerun of the election. After an investigation, the International UAW ordered a new election for all positions. (Apx. 346-347; 853-864). In the rerun, Mr. Webster, Mr. Mitchell, Mr. Moore and Mr. Bianchi were once again elected. (Apx. 339, 346-347).

As the elected officers of Local 51, Mr. Webster and the Local Defendants comprised Local 51's bargaining committee. (Apx. 1255). In August 1999, Local 51 and Chrysler began negotiations for a new local agreement. (Apx. 367). Mr. Webster participated fully in all the bargaining sessions. (Apx. 367-73). On October 21, 1999 Chrysler and the bargaining committee reached a tentative settlement agreement which provided that ". . . [t]he Union will recommend to the membership that it be ratified . . . ." (Apx. 274-84). The entire bargaining committee, including Mr. Webster, signed the settlement agreement. (Apx. 375-80).

Shortly after negotiations concluded, the bargaining committee distributed a document entitled "Contract Highlights" which outlined the major contract changes. (Apx. 285-292). On the same day, and despite having signed the settlement agreement, Mr. Webster distributed a document entitled "Contract Low Lights." (Apx. 293-294).

The membership of Local 51 rejected the settlement agreement. (Apx. 400). Thereafter, members circulated a petition seeking another ratification vote. (Apx. 409). After a second ratification vote was scheduled, Mr. Webster continued his campaign against the settlement agreement. (Apx. 299-305, 402-403). In response, the Local Defendants published a series of documents entitled "A Candid Conversation With Sir Richard of Webster." (Apx. 306-311). These "candid conversations," in question and answer format, depicted fictitious, satirical conversations with Mr. Webster in which he admitted, among other things, that he had a history of misleading the membership. The Local Defendants also distributed flyers in response to Mr. Webster's campaign against the settlement agreement entitled: "Are You Interested in the Truth;" "Let's Talk About the Truth;" and "So Richard You Want An Apology" in which they apologized for not confronting him sooner. (Apx. 312-316).

On November 4, 1999, the membership ratified the settlement agreement. (Apx. 317).

Mr. Webster then filed internal union charges against the Local Defendants based, among other things, on the ratification vote campaign literature. (Apx. 348, 352, 410-411).

On December 31, 1999, Mr. Webster retired from his employment with Chrysler. Under the 1999 National Agreement between the UAW and Chrysler, Mr. Webster was required to give up his position as Shop Committeeman. (Apx. 334-335).

Between the ratification vote and Mr. Webster's retirement, none of the Local Defendants published any documents critical of him. During that time, Mr. Webster was able to carry out his duties as Shop Committeeman without interference from them.

Long after his retirement (and after Mr. Webster filed this lawsuit), flyers critical of him were posted in the plant. (Apx. 67, 69). The trial court permitted Mr. Webster to amend his complaint to allege that these flyers constituted continuing retaliation. In discovery, he admitted that he had no evidence that any of the Local Defendants wrote or distributed any of them. (Apx. 425).

Mr. Webster remains a (retired) member of Local 51 in good standing. (Apx. 67).

STATUTORY PROVISIONS

Section 101(a)(2) of the Labor Management Reporting and Disclosure Act, ("LMRDA"), 29 U.S.C. §411(a)(2), grants union members the rights of free speech and assembly. Section 609 of the LMRDA, 29 U.S.C. §529, prohibits a labor organization from disciplining its members for exercising those rights:

> It shall be unlawful for any labor organization, or any officer, agent, shop steward, or other representative of a

> labor organization, or any employee thereof to fine, suspend, expel, or otherwise discipline any of its members for exercising any right to which he is entitled under the provisions of his chapter. . . .

REASONS FOR DENYING THE PETITION

Mr. Webster asserts that there is a split in the Circuits on the meaning of "otherwise discipline" in Section 609 of the LMRDA. As he did below, Mr. Webster relies principally on *Kinslow v. Briscoe*, 222 F.3d 269 (7th Cir. 2000).

There is no conflict in the Circuits. This Court has already provided the controlling definition of "otherwise discipline" in *Breininger v. Sheet Metal Workers Local 6*, 493 U.S. 67, 91, 110 S.Ct. 424, 107 L.Ed.2d 388 (1989).[1] This Court narrowly construed the phrase to mean discipline by a union acting as a collective entity rather than ad hoc retaliation:

> [W]e find that by using the phrase "otherwise discipline," Congress did not intend to include all acts that deterred the exercise of rights protected under the LMRDA, but rather meant instead to denote only punishment authorized by the union as a collective entity to enforce its rules. . . . The term refers only to actions "undertaken under color of the union's right to control the member's conduct in order to protect the interests of the union or its membership." (citations omitted).

In *Kinslow*, the Seventh Circuit did not address the issue of what constituted "other" discipline under the LMRDA. It had no need to do so. Mr. Kinslow had been *expelled* from the

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[1] Mr. Webster spends considerable time discussing Justice Stevens' dissent in *Breininger*. (Petition at 17-19). The fact that there was a dissent on the relevant issue has no bearing on whether this Petition should be granted. Mr. Webster also cites various decisions predating *Breininger*. (Petition at 13-14). Cases decided before this Court addressed the meaning of "otherwise discipline" in *Breininger* have no bearing on whether there is a post-*Breininger* split in the Circuits.

union. Expulsion is one of the specific types of discipline prohibited under Section 609.

Any question as to whether, in *Kinslow*, the Seventh Circuit followed *Breininger* (which it did not mention) or correctly applied Section 609 (which it did not cite) was resolved by *Konen v. Teamsters*, 255 F.3d 402, 408-09 (7th Cir. 2001). There, in an opinion written by the same judge who wrote *Kinslow*, the court quoted at length from *Breininger*, including the statement that the "specifically enumerated types of discipline—fine, expulsion, and suspension—imply some sort of established disciplinary process rather than ad hoc retaliation by individual union members." *Breininger*, 493 U.S. at 91-92.

In *United Food Workers Local 911 v. United Food Workers*, 301 F.3d 468, 474 (6th Cir. 2002), the Sixth Circuit looked to *Konen* in reaching the same conclusion. There is no split between the Sixth and Seventh Circuits. Regardless, the decision of the Sixth Circuit below is consistent with *Breininger* even if *Kinslow* somehow was not.

Mr. Webster was not the subject of discipline of any kind. He was subjected to intense criticism for reneging on his promise to support the settlement agreement. This criticism, Mr. Webster claims, caused him to retire. But, the Local Defendants were also members of Local 51. They had the same rights to criticize Mr. Webster for his actions as an elected union official as he had to criticize them. The literature they wrote pertained to important union matters—the ratification of the local labor agreement that the bargaining committee took two months to negotiate. Certainly, the exercise of free speech by the individuals Mr. Webster sued—speech which itself is protected *by* Section 101(a)(2) of the LMRDA—cannot be equated with discipline *under* the LMRDA.

CONCLUSION

Mr. Webster's Petition should be denied. Respondents request that, given the Petition's frivolous nature, they be awarded double costs and attorney fees under Rule 42.2.

Respectfully Submitted,

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